Rosli bin Dahlan v Datuk Ahmad Terrirudin Mohd Salleh (Peguam Negara Malaysia) & Ors

MAHKAMAH TINGGI (KUALA LUMPUR) — JUDICIAL REVIEW APPLICATION NO WA-25–139–04 OF 2024
WAN AHMAD FARID J
7 OCTOBER 2024

Administrative Law — Judicial review — Application for leave — Challenge against issuance of seizure order under s 50 of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 by second putative respondent — Whether investigative process of enforcement agency amenable to judicial review

The applicant filed a judicial review application against the Royal Malaysia Police ('PDRM'), the Immigration Department of Malaysia ('JIM') and their officers, to challenge, inter alia, the conduct of the respondents therein, which led to the alleged wrongful arrest, remand, freezing of all bank accounts and travel ban issued against the applicant ('the first JR'). The challenge in the first JR was against the purported mala fide actions, decisions and omissions of PDRM, JIM and their officers. The High Court held in the first JR that the decision-making process was based on the exercise of powers by PDRM and its officers under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLA') which were amenable to judicial review. In this application for leave for judicial review, the applicant sought, inter alia, the following reliefs: (a) an order of certiorari to quash the decision and/or action of the first to eighth putative respondents who had issued or caused the issuance of the seizure order under s 50 of the AMLA against four funds in the applicant's ASNB account ('the seizure order'); (b) an order of mandamus to compel the first to eighth putative respondents to revoke, vary or cause the revocation and variation of the seizure order; (c) in furtherance to para (a) above, an order for Permodalan Nasional Bhd to uplift the seizure of the applicant's ASNB accounts; (d) an order of mandamus to compel the third to eighth putative respondents or the officers of the PDRM to produce the basis for the issuance of the seizure order; and (e) an order of mandamus to compel the first and second putative respondents to produce the basis for the issuance of the seizure order. The applicant's position was that a wrongful seizure order was amenable to judicial review. The issues for consideration were: (i) whether the investigative process of an enforcement agency was amenable to judicial review; and (ii) was in the affirmative, the circumstances where this court could intervene and grant leave for an aggrieved person to commence judicial review.

Held, refusing the application:

(1) The actions or decisions of an enforcement agency, in this case, the PDRM, in the exercise of its investigative powers were not open to judicial review. But this general proposition was subject to an exception ie the act of the investigating officers was tainted with mala fide or bad faith. It was for the applicant to show that the seizure order was issued in bad faith. The onus was on the applicant and mere suspicion was insufficient. There was no evidence before the court that the investigation had been completed either against the main perpetrator or the applicant. Therefore, premature to conclude that the actions of the putative respondents were tainted with mala fide to justify the granting of leave (see paras 50–51, 53 & 55).

(2) The pleaded case of the applicant was anchored solely on the allegation that the deputy public prosecutor ie the second putative respondent's exercise of power under s 50 of the AMLA was based on the false information given to him by the PDRM's investigating officers. The allegation, without more, did not suggest any ulterior motive, predilection or prejudice in any way. The applicant had not sought to impugn the second putative respondent's good faith and honesty. There was no suggestion that the second respondent had colluded with the investigating officers of PDRM in the exercise of his discretion under s 50 of the AMLA. Having acted on information alleged to have been untrue, without more, was not compelling enough and did not constitute 'appropriate circumstances' (see paras 62–63).

[Bahasa Malaysia summary

Pemohon memfailkan permohonan semakan kehakiman terhadap Polis Diraja Malaysia ('PDRM'), Jabatan Imigresen Malaysia ('JIM') dan pegawai-pegawai mereka, untuk mencabar, antara lain, tindakan responden-responden di dalamnya, yang membawa kepada dakwaan penahanan salah, reman, pembekuan semua akaun bank dan larangan perjalanan yang dikeluarkan terhadap pemohon ('JR pertama'). Cabaran dalam JR pertama adalah terhadap tindakan, keputusan dan peninggalan mala fide yang dikatakan dilakukan oleh PDRM, JIM dan pegawai-pegawai mereka. Mahkamah Tinggi memutuskan dalam JR pertama bahawa proses membuat keputusan adalah berdasarkan kepada pelaksanaan kuasa oleh PDRM dan pegawai-pegawainya di bawah Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil Daripada Aktiviti Haram 2001 ('APPWHPPKDHDAH') yang boleh diterima untuk semakan kehakiman. Dalam permohonan untuk kebenaran bagi semakan kehakiman ini, pemohon memohon, antara lain, relief-relief berikut: (a) satu perintah certiorari untuk membatalkan keputusan dan/atau tindakan responden-responden putatif pertama hingga kelapan yang telah mengeluarkan atau menyebabkan pengeluaran perintah penyitaan di bawah s 50 AMLA terhadap empat dana

dalam akaun ASNB pemohon ('perintah penyitaan'); (b) satu perintah mandamus untuk memaksa responden-responden putatif pertama hingga kelapan untuk membatalkan, mengubah atau menyebabkan pembatalan dan pengubahan perintah penyitaan; (c) sebagai lanjutan kepada perenggan (a) di atas, satu perintah untuk Permodalan Nasional Bhd untuk menarik balik penyitaan akaun-akaun ASNB pemohon; (d) satu perintah mandamus untuk memaksa responden-responden putatif ketiga hingga kelapan atau pegawai-pegawai PDRM untuk mengemukakan asas bagi pengeluaran perintah penyitaan; dan (e) satu perintah mandamus untuk memaksa responden-responden putatif pertama dan kedua untuk mengemukakan asas bagi pengeluaran perintah penyitaan. Kedudukan pemohon adalah bahawa perintah penyitaan yang salah adalah tertakluk kepada semakan kehakiman. Isu-isu untuk pertimbangan adalah: (i) sama ada proses penyiasatan suatu agensi penguatkuasaan adalah tertakluk kepada semakan kehakiman; dan (ii) jika jawapannya afirmatif, keadaan di mana mahkamah ini boleh campur tangan dan memberikan kebenaran kepada seseorang yang terkilan untuk memulakan semakan kehakiman.

Diputuskan, menolak permohonan:

(1) Tindakan atau keputusan suatu agensi penguatkuasaan, dalam kes ini, PDRM, dalam melaksanakan kuasa penyiasatannya tidak terbuka kepada semakan kehakiman. Tetapi proposisi am ini tertakluk kepada pengecualian iaitu tindakan pegawai penyiasat telah dicemari dengan mala fide atau niat jahat. Adalah menjadi tanggungjawab pemohon untuk menunjukkan bahawa perintah penyitaan telah dikeluarkan dengan niat jahat. Beban pembuktian adalah pada pemohon dan sekadar syak wasangka adalah tidak mencukupi. Tiada bukti di hadapan mahkamah bahawa penyiasatan telah diselesaikan sama ada terhadap pelaku utama atau pemohon. Oleh itu, adalah pramatang untuk membuat kesimpulan bahawa tindakan responden-responden putatif telah dicemari dengan mala fide untuk mewajarkan pemberian kebenaran (lihat perenggan 50–51, 53 & 55).

(2) Kes yang diplidkan oleh pemohon adalah berlandaskan semata-mata kepada dakwaan bahawa timbalan pendakwa raya iaitu responden putatif kedua telah melaksanakan kuasanya di bawah s 50 AMLA berdasarkan maklumat palsu yang diberikan kepadanya oleh pegawai penyiasat PDRM. Dakwaan itu, tanpa lebih lanjut, tidak mencadangkan sebarang motif tersembunyi, kecenderungan atau prejudis dalam apa jua cara. Pemohon tidak berusaha untuk mempersoalkan niat baik dan kejujuran responden putatif kedua. Tiada cadangan bahawa responden kedua telah bersekongkol dengan pegawai penyiasat PDRM dalam melaksanakan budi bicaranya di bawah s 50 AMLA. Bertindak berdasarkan maklumat yang didakwa tidak benar, tanpa lebih lanjut, tidak cukup meyakinkan dan tidak membentuk 'keadaan yang sesuai' (lihat perenggan 62–63).]

Cases referred to

Aman Palestin Bhd v Tan Sri Dato' Sri Haji Azam bin Baki (Ketua Pesuruhjaya Suruhanjaya Pencegahan Rayuah Malaysia) & Ors [2024] MLJU 1653; [2024] CLJU 1541, HC (refd)

City Growth Sdn Bhd & Anor v The Government of Malaysia [2006] 1 MLJ 581; [2005] 7 CLJ 422, HC (refd)

Datuk Kapten (B) Muhammad Suhaimi Yahya (sebagai pegawai awam pertubuhan yang didaftarkan sebagai Parti Peribumi Bersatu Malaysia) & Anor v Tan Sri Dato' Sri Hj Azam bin Baki (Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia) & Ors [2023] MLJU 1298; [2023] 5 MLRH 432, HC (refd)

Empayar Canggih Sdn Bhd v Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri Dan Hal Ehwal Pengguna Malaysia & Anor [2018] Supp MLJ 16, FC (refd)

Haris Fathillah bin Mohamed Ibrahim & Ors v Tan Sri Dato' Sri Hj Azam bin Baki & Ors [2023] 2 MLJ 296, FC (distd)

Khor Peng Chai v Bank Negara Malaysia [2011] MLJU 1590; [2012] 4 CLJ 987, HC (refd)

Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal [2019] 3 MLJ 443, FC (refd)

Peguam Negara Malaysia v Nurul Izzah bt Anwar & Ors [2017] 4 MLJ 656, CA (refd)

Pengarah Pejabat Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan Negeri Sabah & Ors v Multi Inrich Sdn Bhd [2019] 1 MLJ 818; [2018] 3 CLJ 752, CA (refd)

Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprises Sdn Bhd [1979] 1 MLJ 135, FC (refd)

Regina (Corner House Research and another) v Director of the Serious Fraud Office (JUSTICE intervening) [2009] AC 756, HL (refd)

Rosli bin Dahlan v IG Tan Sri Razarudin bin Husain @ Abd Rashid & Ors [2024] MLJU 1727, HC (refd)

Simplex Sdn Bhd lwn Mohd Samsol bin Md Muzer dan satu lagi [2015] 9 MLJ 78, HC (refd)

Sundra Rajoo a/l Nadarajah v Attorney General [2020] 3 MLJ 788, CA (refd)

Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209, FC (refd)

Suruhanjaya Pencegahan Rasuah Malaysia & Ors v Latheefa Beebi Koya & Anor [2017] 5 MLJ 349; [2017] 10 CLJ 1, FC (refd)

Yeap Hock Seng @ Ah Seng v Minister For Home Affairs, Malaysia & Ors [1975] 2 MLJ 279 (refd)

Legislation referred to

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ss 4(1), 29, 44, 44(6), 50
Criminal Procedure Code s 376
Federal Constitution arts 125, 145, 145(3)
Penal Code s 420
Police Act 1967
Rules of Court 2012 O 34, O 53, O 53 r 3, 3(2), 3(3)

DP Naban (with Harvinderjit Singh a/l Manjit Singh, Harvinder Singh Sidhu, Amiratu Al Amirat Saleh Garbaa and Elani Mazlan) (Vin Law Co) bagi pihak pemohon.
Rahazlan Affandi bin Abdul Rahim (with Nur Syazwani bt Abdul Aziz) (Federal Counsel, Jabatan Peguam Negara) bagi pihak responden-responden.

Wan Ahmad Farid J:

THE PARTIES

[1] The applicant is a senior advocate and solicitor and a founding partner of the legal firm Messrs Rosli Dahlan Saravana Partnership.

[2] The first putative respondent is the Attorney General of Malaysia. Pursuant to art 145 of the Federal Constitution, read together with s 376 of the Criminal Procedure Code ('the CPC'), the first putative respondent has the authority and responsibility over the second putative respondent in the exercise of his powers as the deputy public prosecutor.

[3] The second putative respondent is the deputy public prosecutor ('DPP'), who had issued a seizure order purportedly under s 50 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLA') against the applicant.

[4] The third putative respondent is the Inspector General of Police and has authority and responsibility under the Police Act 1967 ('the Police Act') over the fourth to seventh putative respondents in the exercise of their powers as officers of the Money Laundering Crime Investigation Team ('AMLA team'), secretariat of the Inspector General of Police ('UKPN').

[5] The eighth putative respondent is the Royal Malaysia Police ('PDRM') and the enforcement agency under the Police Act, which is responsible for the maintenance of law and order, the preservation of peace and security of Malaysia, the prevention and detection of crime, the apprehension and prosecution of offenders and the collection of security intelligence.

[6] The ninth putative respondent is the Government of Malaysia.

THE FACTUAL BACKGROUND

[7] This is an application for leave for judicial review.

[8] The factual background of the case as reflected in the statement in encl 3 and the affidavit in support of this application in encl 2 ('AIS2') is as follows.

[9] On 29 December 2023, the applicant filed a Judicial Review Application No WA-25–420–12 of 2023 ('JR No 420') against PDRM, the Immigration Department of Malaysia ('JIM') and their officers. The application in JR No 420 was to challenge, inter alia, the conduct of the respondents therein, which led to the alleged wrongful arrest, remand, freezing of all bank accounts and travel ban issued against the applicant ('first JR').

[10] The challenge in the first JR was against the purported mala fide actions, decisions and omissions of PDRM, JIM and their officers. The procedural improprieties raised in the first JR are as follows:

(a) the PDRM had purportedly orchestrated a false nexus between the applicant and Police Report No 4381/23 by AirAsia against i-Serve based on an incident in 2018, which has been classified as fraud under s 420 of the Penal Code;

(b) at all material times, the applicant insisted that he is not related in any way whatsoever to the alleged criminal offence, if at all, as reflected in the Police Report No 4381. In any event, the applicant was not even named in the said Police Report No 4381;

(c) based on Police Report No 4381, the PDRM had arrested the applicant on 26 October 2023 at around 10.00pm, which, according to the applicant, had adversely affected, oppressed and prejudiced him ('arrest');

(d) the applicant asserted that his arrest was orchestrated;

(e) during his arrest, the applicant notified the arresting officers of his obstructive sleep apnea (OSA) condition. If he were to be detained overnight, the applicant would need his CPAP machine. This was denied and according to the applicant, he had suffered from recurring acute bronchitis and breathlessness as a result of the denial;

(f) the applicant was not examined nor was any statement recorded from him that night;

(g) at the magistrates court in Jalan Sultan Abdul Halim the next day, the PDRM failed to obtain a seven day remand order. Despite the magistrate

ordering that the applicant be released the same evening, the PDRM continued to detain the applicant without any investigation/examination being done; and

(h) instead, the applicant was brought to Menara KPJ, where a group of reporters were on standby to take the applicant's photo and post reports, where he was seen handcuffed and chained in an orange uniform. The applicant contended that these actions of the PDRM were clearly mala fide.

Wrongful freezing

[11] After the applicant's arrest on 26 October 2023, the applicant discovered that the AMLA team, UKPN of the PDRM had frozen his bank account during the remand application on 27 October 2023. Until the applicant was examined and his statement recorded eight days later on 3 November 2023, the applicant asserted that there was no prior notification or service of any freezing order.

[12] The applicant reiterated that the PDRM have abused their power and acted mala fide in issuing a blanket freezing on all of the applicant and wife's bank accounts based merely on Police Report No 4381/23. The Police Report No 4381/23 is in respect O 34 credit top-up transactions between AirAsia and i-Serve and the alleged amount involved was RM48.4m. It is for this reason that the applicant asserted that the putative respondents have no basis for freezing any amount in the applicant's account that exceeded the alleged amount.

[13] After two months of the freezing order, by letter dated 18 December 2023, the respondents informed that some of the applicant's bank accounts had been released.

The seizure order

[14] Subsequently, the PDRM seized four funds from the applicant's ASNB account by serving on the applicant on 18 January 2024, the seizure order dated 12 January 2024. According to the applicant, the seizure was made to appear as if it is related to the subject matter of investigation of Police Report No 4381 of 23.

[15] After becoming aware of the attempt to allegedly circumvent the first JR, the applicant sent three letters to PDRM and the second putative respondent regarding the revocation of the wrongful seizure. The line of argument of the applicant is anchored on these grounds:

(a) the PDRM's mala fide and wrongdoing in the freezing order cannot be rectified through the seizure order;

(b) the PDRM's mala fide and wrongdoing can be seen clearly when the seizure of four of his ASNB funds was made with the condition that 'the seizure only involves the unit amount while the account is released and the remaining balance can be transacted as usual'. According to the applicant, this is aimed at avoiding the responsibility of the PDRM under s 44(6) of the AMLA; and

(c) the illegality of the freezing order subsists and vitiates the seizure order.

[16] There was no response from either the PDRM or the second putative respondent.

[17] The applicant contended that it is evident that the examination against him and subsequent seizure of his assets were not actually done to assist PDRM in investigating the AirAsia's claim against i-Serve, but rather for a collateral purpose to victimise and embarrass the applicant for reasons that are unlawful under the law.

The travel ban

[18] The applicant alleged that PDRM then conspired with the JIM to purportedly abuse their power to cause a travel ban to be imposed against the applicant, which infringed the applicant's right to fundamental liberty, which is a persecution of the applicant ('travel ban').

[19] According to the applicant, the travel ban is an infringement of his right to fundamental liberty.

[20] The travel ban was backdated to 25 October 2023, but according to the applicant, it was not communicated to him despite his most recent contemporaneous communication with the PDRM.

THE KL HIGH COURT'S DECISION IN JR NO 1

[21] On 3 April 2024, the Kuala Lumpur High Court held in JR No 1 that the decision-making process was based on the exercise of powers by PDRM and its officers under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('the AMLA') which are amenable to judicial review.

[22] This decision is now the subject matter of appeal to the Court of Appeal.

[23] According to the applicant, the seizure order flowed from the freezing orders, which is the subject matter of the first JR. These orders stemmed from the same series of transactions under AMLA. Pursuant to s 50 of the AMLA, the public prosecutor ('PP'), in issuing the seizure order, acted on the information provided by the investigating officer.

THE APPLICATION FOR LEAVE FOR JUDICIAL REVIEW

[24] In this application for leave for judicial review ('the second judicial review'), the applicant seeks, inter alia, the following reliefs:

(a) an order for certiorari to quash the decision and/or action of the first to eighth putative respondents who have issued or caused the issuance of the seizure order under s 50 of the AMLA against four funds in the applicant's ASNB account ('seizure order');

(b) an order for mandamus to compel the first to eighth putative respondents to revoke, vary or cause the revocation and variation of the seizure order;

(c) in furtherance to para (a) above, an order for Permodalan Nasional Bhd to uplift the seizure of the applicant's ASNB accounts;

(d) an order for mandamus to compel the third to eighth putative respondents or the officers of the PDRM to produce the basis for the issuance of the seizure order; and

(e) an order for mandamus to compel the first and second putative respondents to produce the basis for the issuance of the seizure order.

[25] The application is supported by the applicant's affidavit in encl 2 ('AIS2')

[26] The applicant's position is that a wrongful seizure order is amenable to judicial review. To begin with, learned counsel for the applicant contended that the PP's decision and exercise of power under AMLA are clearly administrative actions and in the nature of public law. Learned counsel referred to the judgment of the Court of Appeal in *Sundra Rajoo a/l Nadarajah v Attorney General* [2020] 3 MLJ 788 (CA). There, Abdul Rahman Sebli JCA (as the CJ (Sabah and Sarawak) then was) reiterated the proposition that if the source of power is a statute, then clearly the body in question will be subject to judicial review.

[27] As to whether the criminal investigative powers of enforcement agencies such as PDRM are amenable to judicial review, learned counsel for the applicant submitted that the AG qua PP's discretionary power is not absolute under the law. In short, the PP must act according to law, as his prosecutorial

power is subject to legal limits. Relying on the judgment *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443 (FC), learned counsel submitted that prosecutorial discretion cannot be exercised in bad faith.

[28] In view of *Chin Chee Kow* and another recent judgment of the Federal Court in *Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors* [2021] 5 MLJ 209 (FC), learned counsel submitted that even the power of the Attorney General qua PP under art 145(3) of the Federal Constitution is amenable to judicial review in appropriate circumstances. Extending the line of argument, learned counsel submitted that there is no reason why the seizure order made under s 50 of AMLA cannot be subjected to judicial review in appropriate circumstances.

[29] My attention was also drawn to the judgment of the High Court in *Datuk Kapten (B) Muhammad Suhaimi Yahya (sebagai pegawai awam pertubuhan yang didaftarkan sebagai Parti Peribumi Bersatu Malaysia) & Anor v Tan Sri Dato' Sri Hj Azam bin Baki (Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia) & Ors* [2023] MLJU 1298; [2023] 5 MLRH 432.

The challenge on the seizure order

[30] Learned counsel for the applicant made it clear that the applicant is not challenging the discretionary power of the Attorney General qua PP under art 145(3) of the Federal Constitution. Rather, the challenge is mounted on the seizure order which is consequent to the freezing orders, which are the subject matter of the first judicial review.

[31] In any event, learned counsel submitted that the seizure order, which is housed in s 50 of the AMLA, is predicated on s 44, which concerns the freezing orders. On this note, learned counsel attracted the court's attention that in the first JR, the Kuala Lumpur High Court held that there was a basis to rule that the freezing orders could have been tainted — hence the grant of leave to commence judicial review. The attendant consequences of that ruling — learned counsel submitted — would be that the seizure order too can be tainted and therefore amenable to judicial review.

[32] It bears repeating that both the freezing orders and seizure order stem from the same series of transactions under the same legislation.

THE OBJECTION FROM THE ATTORNEY GENERAL

[33] The Attorney General ('AG') objects to this application for leave.

[34] In objecting to this application, the AG has filed an affidavit in reply through Supt Mohd Faizal bin Mohd Atan, the seventh putative respondent in encl 18 ('AIR18'). I have two observations to make on the filing of AIR18.

[35] First, this is an ex parte application, where the AG will appear as of right, not as a party. The legal position is provided under O 53 r 3 of the Rules of Court 2012 ('the ROC'). The law, I believe, can be seen in the judgment of the Court of Appeal in *Peguam Negara Malaysia v Nurul Izzah bt Anwar & Ors* [2017] 4 MLJ 656 (CA), where Idrus Harun JCA (later FCJ) speaking on behalf of the Court of Appeal, held that the AG has the locus standi and is undeniably a party at the leave application in the sense that he is the guardian of public interest. His presence is required by law without being made a party to the proceedings. Order 53 r 3(3) of the ROC makes it mandatory for an applicant to give notice of the leave application to, and at the same time, lodge the O 53 statement and affidavit in the AG's Chambers. A failure to comply with that provision will result in the application being dismissed. Hence, when the AG appears before the court at this stage, the court has to recognise his presence and has no jurisdiction not to hear him.

[36] Secondly, the AG, at least at this stage, is not representing the putative respondents. The fact that the AG is himself a putative respondent in this case is only a coincidence. If the AG, as the guardian of public interest, objects to the application for leave, he is at liberty to do so. In fact, the AG has a duty to do so.

[37] But the objection must be based purely on the point of law since the only thing that the AG has to establish in objecting to the application for leave is to show that it is frivolous or vexatious and hence does not justify further arguments on a substantive motion.

[38] It is for this reason that a putative respondent need not file an affidavit-in-reply. However, since AIR18 is to inform this court that an appeal on the decision of the Kuala Lumpur High Court in the first judicial review is pending at the Court of Appeal, I will accept it as it is.

[39] I have taken the liberty to summarise the objections of the AG as follows.

[40] First, the learned senior federal counsel ('SFC') submitted that the

A actions of the putative respondents are not amenable to judicial review. My attention was then drawn to s 29 of the AMLA, which empowers the enforcement agency, in the instant case, the PDRM, to cause an investigation to be made. In short, it may exercise all the powers of investigation provided under AMLA if it has reason to suspect the commission of an offence under
B AMLA.

[41] The learned SFC contended that it would be misconceived for the applicant to assert that it is premature to associate him with any money laundering, including the issuance of the seizure order, as the PDRM has yet to
C ascertain the predicate offence against the main perpetrator, let alone against the applicant.

[42] Put in other words, the learned SFC submitted that the law does not require that an offence under AMLA must have been committed before the
D enforcement officers seize the movable property in the financial institutions. At this initial stage, in order to legitimise the seizure order, the investigators must only have a reasonable suspicion that an offence has been committed: see *Pengarah Pejabat Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan Negeri Sabah & Ors v Multi Inrich Sdn Bhd* [2019] 1 MLJ 818; [2018] 3 CLJ
E 752 (CA).

[43] In any event, the order of the PP under s 50 of the AMLA is part and parcel of the investigation process into an offence under s 4(1). In order to
F facilitate the investigation into the offence of money laundering, AMLA empowers the PP to assist the investigating officer.

[44] In the circumstances, the learned SFC urged this court to conclude that the seizure order and travel ban are part and parcel of the criminal
G investigation, which is not amenable to judicial review.

[45] In any event, the learned SFC further contended that s 50 of the AMLA provides an avenue for the investigating officers from PDRM via the PP to secure and preserve the evidence in relation to such offence under the Act: see
H *Khor Peng Chai v Bank Negara Malaysia* [2011] MLJU 1590; [2012] 4 CLJ 987.

[46] My attention was also attracted to the judgment of the High Court in *Simplex Sdn Bhd lwn Mohd Samsol bin Md Muzer dan satu lagi* [2015] 9 MLJ
I 78, which carries the proposition that s 50 of AMLA has the purpose of obtaining evidence for prosecution. It is an investigation process and clearly is not a decision amenable to judicial review. The learned SFC argued that to hold otherwise would expose criminal investigative processes to constant judicial review.

[47] The second objection of the SFC is premised on the ground that this application for judicial review is an abuse of the court process. In his submission, the learned SFC contended that the applicant's action in commencing this judicial review has the implication of inviting this court to interfere with the criminal investigation conducted against the applicant under s 4(1) of the AMLA.

[48] Citing *Khor Peng Chai* and a line of other authorities, the learned SFC submitted that there would be much chaos and confusion if the courts were allowed to interrupt and usurp the functions and jurisdictions of an enforcement agency such as PDRM at the early stage of investigation since it would be against the public interest to do so.

ANALYSIS

[49] Based on the submissions of the parties, I have taken the liberty to identify the issues to be determined as follows:

(a) is the investigative process of an enforcement agency amenable to judicial review?; and

(b) if the answer to question (a) is in the affirmative, what are the circumstances where this court can intervene and grant leave for an aggrieved person to commence judicial review?

[50] The general proposition, I believe, can be found in the judgment of the Federal Court in *Suruhanjaya Pencegahan Rasuah Malaysia & Ors v Latheefa Beebi Koya & Anor* [2017] 5 MLJ 349; [2017] 10 CLJ 1. The Federal Court referred to *City Growth Sdn Bhd & Anor v The Government of Malaysia* [2006] 1 MLJ 581; [2005] 7 CLJ 422 and *Empayar Canggih Sdn Bhd v Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri Dan Hal Ehwal Pengguna Malaysia & Anor* [2018] Supp MLJ 16 (FC) and held that the actions or decisions of an enforcement agency, in this case, the PDRM, in the exercise of its investigative powers are not open to judicial review. The rationale behind the general proposition is that the court should not expose the criminal investigative processes of all law enforcement agencies to constant judicial review.

[51] But this general proposition is subject to an exception. Abu Samah Nordin FCJ in *Latheefa Koya* indicated that one way to challenge, if at all, is to prove that the act of the investigating officers was tainted with mala fide or bad faith.

[52] At this leave stage, this court has to presume that the allegations in the statement made under O 53 r 3(2) of the ROC and the averments of the

applicant in AIS2 to be true. Even if those averments are presumed to be true, can they constitute mala fide sufficient for this court to grant leave?

[53] To begin with, it is for the applicant to show that the seizure order was issued in bad faith. The onus is on the applicant and as held by the Federal Court in *Latheefa Koya*, mere suspicion is insufficient. The Federal Court referred to the judgment of Abdoolcader J (later SCJ) in *Yeap Hock Seng @ Ah Seng v Minister For Home Affairs, Malaysia & Ors* [1975] 2 MLJ 279 with approval:

> The onus of proving mala fides on the part of the detaining authority is on the applicant and is normally extremely difficult to discharge as what is required is proof of improper or bad motive in order to invalidate the detention order for mala fides and not mere suspicion.
>
> It might perhaps be open to the applicant to suggest that the circumstances surrounding his case might possibly reflect some suspicion of mala fides but this cannot be taken for granted or considered sufficient proof by itself.

[54] In the instant case, the applicant in AIS2 averred that the seizure order was tainted with mala fide on the following grounds:

(a) the Police Report No 4381 of 23 did not even name the applicant to justify the freezing orders and, eventually, the seizing order;

(b) there was no nexus between the applicant and Police Report No 4381 of 23 by AirAsia against i-Serve based on an incident in 2018, which has been classified as fraud under s 420 of the Penal Code; and

(c) the PDRM investigation has not even ascertained or identified the predicate offence against the perpetrator, let alone against the applicant under AMLA.

[55] There is no evidence before me that the investigation has been completed either against the main perpetrator or the applicant. It is, therefore, premature for this court to conclude, as invited by the applicant, that the actions of the putative respondents are tainted with mala fide to justify the granting of leave.

[56] On the contrary, reversing the seizure order based on an incomplete investigation would have far-reaching implications. It would impede and delay the investigation process. This is not to suggest, even for one moment, that the applicant is guilty of any offence. He is not. It is far from that. He is not even charged in any court of law. The question of the applicant being guilty does not arise at all.

[57] However, the applicant comes to this court feeling aggrieved. He said he

was given leave in the first judicial review to challenge, amongst others, the validity of the freezing orders. On that, he was granted leave. In the meantime, this seizure order is like a sword of Damocles hanging over his head. He therefore mounts a challenge in the instant proceedings and seeks leave to commence judicial review. His argument is that, by logical extension, he should be granted leave too.

[58] But ss 44 and 50 of the AMLA are quite apart from one another. Both sections 44 and 50 show the different roles of the investigation officer and the PP. The role of the PP only arises at the time when the PP makes an order directing the investigation officer to seize the movable property in the financial institution; see *Aman Palestin Bhd v Tan Sri Dato' Sri Haji Azam bin Baki (Ketua Pesuruhjaya Suruhanjaya Pencegahan Rayuah Malaysia) & Ors* [2024] MLJU 1653; [2024] CLJU 1541.

[59] But as I indicated earlier, there is no evidence before me that the investigation has been completed. The applicant is practically inviting this court to set aside the seizure order when the investigation process is yet to be completed. I do not, with respect, think that this court can intervene at this stage. For that matter, the investigation, once completed, might even exonerate the applicant. It is, therefore, not to the applicant's advantage for this court to interfere with the investigation process at this stage.

[60] This is precisely what Raus Sharif J (as the learned former CJ then was) meant when His Lordship made this observation in *City Growth*:

> Looking at the order of the deputy public prosecutor as well as the provision of s 50(1) of AMLA, I am of the view that the order of the deputy public prosecutor is not reviewable under O 53 of the RHC. To me, s 50(1) of the AMLA is part and parcel of the investigation process into an offence under s 4(1) of the AMLA. [It] appears that in order to facilitate the investigation into the offence of money laundering, the law has provided with the public prosecutor the power to assist the investigating officer. Clearly, s 50(1) of the AMLA was enacted to enable the public prosecutor or his deputy to make an order of seizure of movable properties in the possession of the financial institutions by ordering the financial institutions not to part, deal in, or otherwise dispose of such property or any part of it until the order is revoked or varied. Thus, by issuing the said orders the deputy public prosecutor was merely exercising a function under AMLA.

[61] But, just like any other discretion, the discretion given to the PP under s 50 is not unfettered. If I may be allowed to borrow the words of Lord Bingham of Cornhill, the PP must seek to exercise his powers so as to promote the statutory purpose for which he is given them. He must direct himself correctly in law. He must act lawfully. He must do his best to exercise an objective judgment on the relevant material available to him. He must exercise

his powers in good faith, uninfluenced by any ulterior motive, predilection or prejudice: see *Regina (Corner House Research and another) v Director of the Serious Fraud Office (JUSTICE intervening)* [2009] AC 756 (HL).

[62] Applying the said proposition to the instant case, does the applicant seek to impugn the second putative respondent's decision in the form of the seizure order based on his good faith and honesty in any way? With respect, the second putative respondent's honesty is never the subject matter of this application for leave. The pleaded case of the applicant is anchored solely on the allegation that the second putative respondent's exercise of power under s 50 of the AMLA is based on the false information given to him by the PDRM's investigating officers. The allegation, without more, does not suggest any ulterior motive, predilection or prejudice in any way.

[63] In para 16.4 of the statement in encl 3, the applicant averred as follows:

> [g] PDRM's wrongdoing by not providing honest and accurate information to the second Respondent;
>
> [h] It is impossible for the second Respondent to have a reasonable basis for the issuance of the seizure order based on information that is not true;
>
> [i] It is impossible for the second Respondent to be satisfied for the issuance of a s 50 Seizure Order based on the false information provided to him by the PDRM.

In the instant case, the applicant has not sought to impugn the second putative respondent's good faith and honesty. There is no suggestion that the second respondent has colluded with the investigating officers of PDRM in the exercise of his discretion under s 50 of the AMLA. Having acted on information alleged to have been untrue, without more, is not compelling enough and does not constitute 'appropriate circumstances' within the meaning of cases cited by both parties.

[64] I have the benefit of reading the grounds of judgment of my learned brother Ahmad Kamal J in the first judicial review in *Rosli bin Dahlan v IG Tan Sri Razarudin bin Husain @ Abd Rashid & Ors* [2024] MLJU 1727. With respect, I can perfectly understand why His Lordship granted leave in the first judicial review. There was a myriad of allegations of mala fide against the investigation team of PDRM in the issuance of the freezing orders.

[65] As I alluded to earlier, in this case, there was no allegation of the DPP's good faith and honesty in exercising his powers under s 50 of the AMLA. Hence the difference.

[66] One final point. Learned counsel for the applicant relied on the

judgment of the Federal Court in *Haris Fathillah bin Mohamed Ibrahim & Ors v Tan Sri Dato' Sri Hj Azam bin Baki & Ors* [2023] 2 MLJ 296 (FC) in advancing the applicant's case. With respect, I agree with the submission of the learned SFC that *Haris Fathillah* should be confined to its own facts. *Haris Fathillah* is concerned with whether a serving superior court judge is liable to criminal investigations and prosecution in the light of the constitutional protections afforded him under art 125 of the Federal Constitution.

FINDINGS

[67] For the reasons aforesaid, my findings are as follows:

(a) the investigative process, which includes the issuance of a seizure order under s 50 of the AMLA, is amenable to judicial review. The discretion granted by statute to any person can never be unfettered. In the words of Raja Azlan Shah Acting CJ (Malaya) (as the former Lord President then was) in *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprises Sdn Bhd* [1979] 1 MLJ 135 (FC), unfettered discretion is a contradiction in terms. Every legal power must have legal limits, otherwise there is dictatorship;

(b) the exercise of discretion under s 50 is subject to judicial review in 'appropriate circumstances' and the presence of mala fide is one of them;

(c) based on the statement in encl 3 and the applicant's affidavit in AIS2, there is no allegation of mala fide on the part of the DPP in the exercise of his powers under s 50 of the AMLA in issuing the seizure order;

(d) although ss 44 and 50 are inextricably related, the mechanisms are different. Section 50 involves the role of the DPP, which is absent in s 44. To mount a challenge on the exercise of the power of the DPP in issuing the seizure order, one has to establish mala fide on the DPP's part. These allegations must be clearly pleaded;

(e) in the instant case, at best, the DPP is alleged to have acted on false information by the PDRM investigation team. That, without more, cannot, in any stretch of legal imagination, constitutes mala fide unless there is a further allegation of collusion between PDRM and the DPP. There was none; and

(f) in any event, as a general rule, this court can rarely interfere in the process of investigation, which has yet to be completed.

[68] This application for leave is therefore refused. In view of this case being of public interest, I am not making any order as to costs.

[69] Having said that, the applicant is not altogether without remedy. In the

event that after the investigation is completed and he is not charged, it is always open for the applicant to seek remedy in a different forum.

Application refused.

Reported by Nabilah Syahida Abdullah Salleh